

Appl. No. 10/655,834
Docket No. 9356
Amdt. dated 09/17/2008
Reply to Office Action mailed on 08/15/2008
Customer No. 27752

REMARKS

Claim Status

Claims 1-31 are pending in the present application.

Claims 1, 19, 20, and 21 have been amended to include claim limitations relating to conducting the claimed “monitoring” of an organization’s websites by “crawling” the organization. Antecedent basis in the specification can be found at page 8, lines 1 – 13.

Claim 20 has been amended to include a limitation that the claimed method includes storing results in a user accessible medium, outputting the results to a user interface, or both. Antecedent basis in the specification can be found at page 12, lines 6 – 10 and page 13, lines 17 – 24.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

No additional claims fee is believed to be due.

Claim Rejection – 35 USC 101 – Tangible Results

Claims 1-31 have been rejected under 35 USC 101. The Office Action states “(W)hile the invention may be concrete and/or useful, there does not appear to be any tangible results.”

Applicant traverses this rejection to Claim 1. Claim 1, step (e) provides a tangible result by providing that the resulting compilation is stored in a user accessible medium. It would be well understood by anyone of ordinary skill in the art that the results of the analysis could be easily accessed from the user accessible medium using conventional computer equipment. Relevant discussion in the specification on this point can be found at page 12, lines 6-10. The user assessable medium constitutes a tangible medium and storing the results in it enables the functionality of the invention to be realized.

The Examiner’s attention is also respectfully directed toward Claim 14, which depends on Claim 1, and further comprises outputting the stored compilation to a user

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interface. This additional step clearly provides a further tangible result for the claimed method.

The Office Action cites *In re Warmerdam*, 33 F.3d 1354, 31 USPQ2d 1754 (Fed. Cir. 1994) in support of the principle that 35 USC 101 requires results of a claimed invention must be “tangible” in order to meet the requirements of 35 USC 101. A review of the rejected method claims in that case reveals that none of the claims included a step of either storing the results in a user accessible medium or outputting the results to a user interface.

Applicant has amended the independent method claims 20 to include the step of storing the results in a user accessible medium, outputting the results to a user interface, or both. Claim 20 should be allowable for the same reasons discussed above with respect to Claims 1 and 14.

Applicant traverses the 35 USC 101 rejection of the independent Claims 19 and 21. Claim 19 relates to a computer readable storage medium. Claim 21 relates to a system for analyzing the usage of an expression. Claims 19 and 21 both explicitly claim a tangible medium which qualifies as statutory subject matter under Section 101 as a manufacture, machine, or composition of matter. The Section 101 rejection in *In re Warmerdam* was not applicable to the “machine” claim in that case, and should not be applied to the claims in the present application that similarly qualify under Section 101 statutory classes such as machines, equipment, or the like. It is further noted that the machine claim was found by the Federal Circuit to meet the statutory requirements for claims under 35 USC 112.

The remaining pending claims depend directly or indirectly upon Claims 1, 19, 20, or 21. The pending Section 101 rejections should be withdrawn for these claims upon withdrawal of the rejections to the independent claims upon which they depend.

Rejection under 35 USC 101 – Tie to Another Statutory Class

Claims 1-18 and 20 have been rejected under 35 USC 101 on the basis stated in the Office Action that they are method/process claims that are not tied to another statutory class of invention.

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Applicant traverses this rejection. The subject matter of the invention relates to a problem or opportunity for improvement presented by computer-based equipment – namely the need to analyze usage of an expression by an organization utilizing inter- or intra-net based websites. The method claimed as a solution to this problem by the Applicant naturally uses computer-based equipment to address the problem and effect its results. The claimed method contemplates the use of computer equipment to conduct the claimed monitoring and crawling steps of organizational websites, as well as in storing and compiling information results. Computer equipment qualifies as a machine, equipment, or composition of matter under 35 USC 101. The claimed steps are not merely incidental to the “another statutory class”, i.e., computer-based equipment, but rather the use of the computer equipment is integral to conducting the method. Under existing USPTO doctrine, the present claims therefore qualify as statutory subject matter.

Applicant further traverses this rejection on the basis that existing case law does not require that a method or process claim must be tied to another statutory class of invention. This traversal is made in order to ensure that Applicant’s rights are preserved in the event that any forthcoming legal decisions affect the analysis for business method and computer implemented claims under 35 USC 101. None of the cases cited in the Office Action – neither *Diamond v Diehr*, 450 US 175, 184 (1981), *Parker v Flook*, 437 US 584, 588 n.9 (1978), *Gottschalk v Benson*, 409 US 63, 70 (1972), nor *Cochrane v Deener*, 94 US 780, 787-88 (1876) – broadly hold that a method or process must be tied to another of the statutory classes of patentable subject matter under 35 USC 101. The statute - 35 USC 101 – also does not contain such a requirement. The rejection to the claims based on this theory should be withdrawn similarly to similar repeal of prior Section 101 tests for statutory subject matter that have been tested and rejected, such as the “not in the technological arts” test. However, as indicated above, it is not necessary to address this second basis for traversal because the current claims should be found to constitute statutory subject matter under the current USPTO interpretation of Section 101 utility.

Rejection Under 35 USC §102 Over “Yoo”

Claims 1-15 and 17-24, 26, 28, and 30 have been rejected under 35 USC §102(e) over US Patent 7,146,416 B1 (Yoo, et al, hereinafter “Yoo”).

Independent claims 1, 19, 20, and 21 have been amended to recite that the monitoring of websites required in the present claims comprises “crawling” the organization websites. As discussed in the specification at page 8, lines 1-13, crawling involves extracting the entire index of an organization’s websites. This includes embedded links and documents associated with a website. Predetermined attributes can then be collected and stored, and compared to the results from a similar monitoring step (again involving crawling and gathering of predetermined attributes) at a different point in time.

The present invention is distinguished from Yoo in critical respects. In Yoo, a traffic monitor provides statistics of traffic that flows to or from a web site or organization that is being monitored. Yoo then monitors the activity generated by users’ visits to these sites.

In the present invention, monitoring is not based upon visitor activity at the sites. Instead, as discussed above, organization sites are monitored in the present invention by crawling the organization’s websites. As previously mentioned, crawling involves indexing the organization websites and existing embedded links and documents associated with the sites. This is distinctly different than Yoo, which discloses monitoring traffic and events initiated by users visiting a site. Yoo does not disclose crawling an organizations websites. In other words, Yoo measures information flow initiated by users across servers, whereas the present inventions measures inventory of content that is contained or embedded in websites.

See Yoo, for example, at: Col 1, lines 6 – 6-7: “The present invention relates to a method and apparatus to provide statistical measurements *relating to Web site activity...*”; Col 4, lines 28 – 33: Using the present invention, a traffic monitor generates statistics about traffic of one or more servers *Monitored events might include page hits, search requests, purchases and/or other actions.*”; Col 6, lines 25-35: ““Traffic” refers to a count, or approximate count, *of the events (hits, ...)*” ; Col 14, lines 9-13: “The buzz value can be calculated *as the number of unique users* searching for that subject ...”. (emphasis added). In each of these instances, it is clear that Yoo relates to monitoring and tracking of user-initiated events, not crawling organization websites to identify an index or inventory of the sites.

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In view of the above, Applicant maintains that the pending claims are novel over Yoo.

Rejection Under 35 USC §103(a)

Claims 16, 25, 27, 29, and 31 have been rejected under 35 USC §103(a) as being unpatentable over Yoo, as applied to Claims 1-15, 17-24, 26, 28, and 30, in further view of Official Notice. Official Notice was taken that converting from audio content to textual content is well-known and would have been obvious to one skilled on the art at the time the invention was made.

This rejection is traversed. The combination of Yoo in view of Official Notice does not teach or suggest all of the claim limitations of the rejected claims for the same reasons discussed above with respect to why Yoo does not anticipate Claims 1-15, et al. Official Notice merely relates to converting audio content to text. Neither Yoo nor Official Notice disclose a process for analyzing usage of an expression including a step of monitoring an organization's websites by crawling the sites and embedded links and documents. Further, there is no suggestion or teaching to one of ordinary skill in the art to modify the method of Yoo by crawling an organization's websites instead of merely monitoring "traffic" or occurrence of user-initiated events.

Applicant respectfully submits that the claimed invention is unobvious and that the rejection should be withdrawn.

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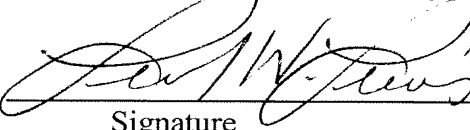
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Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied reference(s). In view of the foregoing, entry of the amendment(s) presented herein, reconsideration of this application, and allowance of the pending claim(s) are respectfully requested.

Respectfully submitted,

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By 
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